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CAPITAL ONE, N.A.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

Cynthia Duncan,

Plaintiff,

v.

Experian Information Solutions, Inc.,
Equifax Information Services, LLC,
TransUnion, LLC, Barclays Bank
Delaware, Capital One, N.A., U.S. Bank,
N.A., American First Finance, LLC,

Defendants.

Case No. 8:24-cv-01970 JWH (JDEx)

*Assigned to Judge John W. Holcomb;
Referred to Magistrate Judge John D.
Early*

**DEFENDANT CAPITAL ONE,
N.A.’S ANSWER TO COMPLAINT
OF CYNTHIA DUNCAN**

Complaint Filed: 09/09/2024
Trial Date: TBD

1 Defendant Capital One, N.A., (hereinafter, “Capital One”), by and through its
2 undersigned counsel, answers the Complaint filed by Plaintiff Cynthia Duncan
3 (“Plaintiff”) as follows:

4 Except as expressly admitted or qualified below, Capital One denies each and
5 every allegation in the FAC.

6 **INTRODUCTION**

7 1. Answering paragraph 1, Plaintiff sets forth a legal conclusion to which
8 no admission or denial is required.

9 2. Answering paragraph 2, Capital One denies that it reported to credit
10 reporting agencies incomplete misleading, or inaccurate information regarding
11 Plaintiff. As to the remainder of the paragraph, Capital One does not have knowledge
12 or information sufficient to form a belief as to the truth of these allegations and on
13 that basis denies, generally and specifically, each and every averment contained
14 therein.

15 3. Answering paragraph 3, Capital One contends that it is comprised of
16 legal conclusions to which no response is required. To the extent a response is
17 required, Capital One denies it engaged in any actionable conduct and denies that
18 Plaintiff is entitled to any relief from Capital One. As to the remainder of the
19 paragraph, Capital One does not have knowledge or information sufficient to form a
20 belief as to the truth of these allegations and on that basis denies, generally and
21 specifically, each and every averment contained therein.

22 4. Answering paragraph 4, Capital One does not have knowledge or
23 information sufficient to form a belief as to the truth of these allegations and on that
24 basis denies, generally and specifically, each and every averment contained therein.

25 5. Answering paragraph 5, Capital One contends that it is comprised of
26 legal conclusions to which no response is required. To the extent a response is
27 required, Capital One denies it engaged in any actionable conduct and denies that
28 Plaintiff is entitled to any relief from Capital One. As to the remainder of the

1 paragraph, Capital One does not have knowledge or information sufficient to form a
2 belief as to the truth of these allegations and on that basis denies, generally and
3 specifically, each and every averment contained therein.

4 6. Answering paragraph 6, Capital One does not have knowledge or
5 information sufficient to form a belief as to the truth of these allegations and on that
6 basis denies, generally and specifically, each and every averment contained therein.

7 7. Answering paragraph 7, Capital One contends that it is comprised of
8 legal conclusions to which no response is required. To the extent a response is
9 required, Capital One denies it engaged in any actionable conduct and denies that
10 Plaintiff is entitled to any relief from Capital One. As to the remainder of the
11 paragraph, Capital One does not have knowledge or information sufficient to form a
12 belief as to the truth of these allegations and on that basis denies, generally and
13 specifically, each and every averment contained therein.

14 8. Answering paragraph 8, Plaintiff sets forth a legal conclusion to which
15 no admission or denial is required.

16 **JURISDICTION & VENUE**

17 9. Answering paragraph 9, Capital One hereby incorporates by reference all
18 of the preceding paragraphs.

19 10. Answering paragraph 10, Capital One contends that it is comprised of
20 legal conclusions to which no response is required. To the extent a response is
21 required, Capital One admits only that this Court would have jurisdiction over this
22 case but for the fact that Plaintiff lacks Article III standing under the United States
23 Constitution. Capital One denies any remaining allegations set forth in paragraph 10.

24 11. Answering paragraph 11, Capital One contends that it is comprised of
25 legal conclusions to which no response is required. To the extent a response is
26 required, Capital One does not dispute that Venue is proper for the purposes of this
27 response.

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12. Answering paragraph 12, as to allegations regarding Capital One, Capital One denies, generally and specifically, each and every averment contained therein. As to the remainder of the paragraph, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

13. Answering paragraph 13, as to allegations regarding Capital One, Capital One denies, generally and specifically, each and every averment contained therein. As to the remainder of the paragraph, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

FICO, Inc.

14. Answering paragraph 14, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

15. Answering paragraph 15, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

16. Answering paragraph 16, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

17. Answering paragraph 17, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

18. Answering paragraph 18, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

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1 19. Answering paragraph 19, Capital One does not have knowledge or
2 information sufficient to form a belief as to the truth of these allegations and on that
3 basis denies, generally and specifically, each and every averment contained therein.

4 20. Answering paragraph 20, Capital One does not have knowledge or
5 information sufficient to form a belief as to the truth of these allegations and on that
6 basis denies, generally and specifically, each and every averment contained therein.

7 21. Answering paragraph 21, Capital One does not have knowledge or
8 information sufficient to form a belief as to the truth of these allegations and on that
9 basis denies, generally and specifically, each and every averment contained therein.

10 22. Answering paragraph 22, Capital One does not have knowledge or
11 information sufficient to form a belief as to the truth of these allegations and on that
12 basis denies, generally and specifically, each and every averment contained therein.

13 23. Answering paragraph 23, Capital One does not have knowledge or
14 information sufficient to form a belief as to the truth of these allegations and on that
15 basis denies, generally and specifically, each and every averment contained therein.

16 24. Answering paragraph 24, Capital One does not have knowledge or
17 information sufficient to form a belief as to the truth of these allegations and on that
18 basis denies, generally and specifically, each and every averment contained therein.

19 25. Answering paragraph 25, Capital One does not have knowledge or
20 information sufficient to form a belief as to the truth of these allegations and on that
21 basis denies, generally and specifically, each and every averment contained therein.

22 26. Answering paragraph 26, Capital One does not have knowledge or
23 information sufficient to form a belief as to the truth of these allegations and on that
24 basis denies, generally and specifically, each and every averment contained therein.

25 27. Answering paragraph 27, Capital One does not have knowledge or
26 information sufficient to form a belief as to the truth of these allegations and on that
27 basis denies, generally and specifically, each and every averment contained therein.

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28. Answering paragraph 28, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

29. Answering paragraph 29, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

30. Answering paragraph 30, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

31. Answering paragraph 31, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

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32. Answering paragraph 32, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

33. Answering paragraph 33, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

34. Answering paragraph 34, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

35. Answering paragraph 35, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

36. Answering paragraph 36, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

1 37. Answering paragraph 37, Capital One does not have knowledge or
2 information sufficient to form a belief as to the truth of these allegations and on that
3 basis denies, generally and specifically, each and every averment contained therein.

4 38. Answering paragraph 38, Capital One does not have knowledge or
5 information sufficient to form a belief as to the truth of these allegations and on that
6 basis denies, generally and specifically, each and every averment contained therein.

7 39. Answering paragraph 39, Capital One does not have knowledge or
8 information sufficient to form a belief as to the truth of these allegations and on that
9 basis denies, generally and specifically, each and every averment contained therein.

10 40. Answering paragraph 40, Capital One does not have knowledge or
11 information sufficient to form a belief as to the truth of these allegations and on that
12 basis denies, generally and specifically, each and every averment contained therein.

13 41. Answering paragraph 41, Capital One does not have knowledge or
14 information sufficient to form a belief as to the truth of these allegations and on that
15 basis denies, generally and specifically, each and every averment contained therein.

16 42. Answering paragraph 42, Capital One does not have knowledge or
17 information sufficient to form a belief as to the truth of these allegations and on that
18 basis denies, generally and specifically, each and every averment contained therein.

19 43. Answering paragraph 43, Capital One does not have knowledge or
20 information sufficient to form a belief as to the truth of these allegations and on that
21 basis denies, generally and specifically, each and every averment contained therein.

22 44. Answering paragraph 44, Capital One does not have knowledge or
23 information sufficient to form a belief as to the truth of these allegations and on that
24 basis denies, generally and specifically, each and every averment contained therein.

25 **Consumer Information Indicator**

26 45. Answering paragraph 45, Capital One does not have knowledge or
27 information sufficient to form a belief as to the truth of these allegations and on that
28 basis denies, generally and specifically, each and every averment contained therein.

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1 46. Answering paragraph 46, Capital One does not have knowledge or
2 information sufficient to form a belief as to the truth of these allegations and on that
3 basis denies, generally and specifically, each and every averment contained therein.

4 47. Answering paragraph 47, Capital One does not have knowledge or
5 information sufficient to form a belief as to the truth of these allegations and on that
6 basis denies, generally and specifically, each and every averment contained therein.

7 48. Answering paragraph 48, Capital One does not have knowledge or
8 information sufficient to form a belief as to the truth of these allegations and on that
9 basis denies, generally and specifically, each and every averment contained therein.

10 49. Answering paragraph 49, Capital One does not have knowledge or
11 information sufficient to form a belief as to the truth of these allegations and on that
12 basis denies, generally and specifically, each and every averment contained therein.

13 50. Answering paragraph 50, Capital One does not have knowledge or
14 information sufficient to form a belief as to the truth of these allegations and on that
15 basis denies, generally and specifically, each and every averment contained therein.

16 51. Answering paragraph 51, Capital One does not have knowledge or
17 information sufficient to form a belief as to the truth of these allegations and on that
18 basis denies, generally and specifically, each and every averment contained therein.

19 52. Answering paragraph 52, Capital One does not have knowledge or
20 information sufficient to form a belief as to the truth of these allegations and on that
21 basis denies, generally and specifically, each and every averment contained therein.

22 53. Answering paragraph 53, Capital One does not have knowledge or
23 information sufficient to form a belief as to the truth of these allegations and on that
24 basis denies, generally and specifically, each and every averment contained therein.

25 54. Answering paragraph 54, Capital One does not have knowledge or
26 information sufficient to form a belief as to the truth of these allegations and on that
27 basis denies, generally and specifically, each and every averment contained therein.
28

1 55. Answering paragraph 55, Capital One does not have knowledge or
2 information sufficient to form a belief as to the truth of these allegations and on that
3 basis denies, generally and specifically, each and every averment contained therein.

4 **Plaintiff's Bankruptcy**

5 56. Answering paragraph 56, Capital One does not have knowledge or
6 information sufficient to form a belief as to the truth of these allegations and on that
7 basis denies, generally and specifically, each and every averment contained therein.

8 57. Answering paragraph 57, Capital One does not have knowledge or
9 information sufficient to form a belief as to the truth of these allegations and on that
10 basis denies, generally and specifically, each and every averment contained therein.

11 58. Answering paragraph 58, Capital One does not have knowledge or
12 information sufficient to form a belief as to the truth of these allegations and on that
13 basis denies, generally and specifically, each and every averment contained therein.

14 59. Answering paragraph 59, Capital One does not have knowledge or
15 information sufficient to form a belief as to the truth of these allegations and on that
16 basis denies, generally and specifically, each and every averment contained therein.

17 **Plaintiff's Credit Report**

18 60. Answering paragraph 60, Capital One does not have knowledge or
19 information sufficient to form a belief as to the truth of these allegations and on that
20 basis denies, generally and specifically, each and every averment contained therein.

21 61. Answering paragraph 61, Capital One does not have knowledge or
22 information sufficient to form a belief as to the truth of these allegations and on that
23 basis denies, generally and specifically, each and every averment contained therein.

24 62. Answering paragraph 62, Capital One does not have knowledge or
25 information sufficient to form a belief as to the truth of these allegations and on that
26 basis denies, generally and specifically, each and every averment contained therein.
27
28

63. Answering paragraph 63, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

64. Answering paragraph 64, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

65. Answering paragraph 65, Capital One admits it received a dispute regarding the Capital One account at issue. Capital One denies it engaged in any actionable conduct and denies that Plaintiff is entitled to any relief from Capital One. As to the remainder of the paragraph, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

66. Answering paragraph 66, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

67. Answering paragraph 67, Capital One contends that it is comprised of legal conclusions to which no response is required. To the extent a response is required, Capital One denies it engaged in any actionable conduct and denies that Plaintiff is entitled to any relief from Capital One. As to the remainder of the paragraph, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

Damages

68. Answering paragraph 68, as to allegations regarding Capital One, Capital One denies, generally and specifically, each and every averment contained therein. As to the remainder of the paragraph, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

69. Answering paragraph 69, as to allegations regarding Capital One, Capital One denies, generally and specifically, each and every averment contained therein. As to the remainder of the paragraph, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

70. Answering paragraph 70, as to allegations regarding Capital One, Capital One denies, generally and specifically, each and every averment contained therein. As to the remainder of the paragraph, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

71. Answering paragraph 71, as to allegations regarding Capital One, Capital One denies, generally and specifically, each and every averment contained therein. As to the remainder of the paragraph, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

72. Answering paragraph 72, as to allegations regarding Capital One, Capital One denies, generally and specifically, each and every averment contained therein. As to the remainder of the paragraph, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

FIRST CAUSE OF ACTION

(Violation of Fair Credit Reporting Act 15 U.S.C. § 1681e(b) Against Defendants)

Experian, Equifax and TransUnion – Failure to Assure Credit

Reporting Accuracy

73. Answering paragraph 73, Capital One hereby incorporates by reference all of the preceding paragraphs.

74. Answering paragraph 74, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

75. Answering paragraph 75, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

76. Answering paragraph 76, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

77. Answering paragraph 77, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

78. Answering paragraph 78, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

79. Answering paragraph 79, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

Willfulness

80. Answering paragraph 80, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

81. Answering paragraph 81, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

82. Answering paragraph 82, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

1 83. Answering paragraph 83, Capital One does not have knowledge or
2 information sufficient to form a belief as to the truth of these allegations and on that
3 basis denies, generally and specifically, each and every averment contained therein.

4 84. Answering paragraph 84, Capital One does not have knowledge or
5 information sufficient to form a belief as to the truth of these allegations and on that
6 basis denies, generally and specifically, each and every averment contained therein.

7 85. Answering paragraph 85, Capital One does not have knowledge or
8 information sufficient to form a belief as to the truth of these allegations and on that
9 basis denies, generally and specifically, each and every averment contained therein.

10 86. Answering paragraph 86, Capital One does not have knowledge or
11 information sufficient to form a belief as to the truth of these allegations and on that
12 basis denies, generally and specifically, each and every averment contained therein.

13 87. Answering paragraph 87, Capital One does not have knowledge or
14 information sufficient to form a belief as to the truth of these allegations and on that
15 basis denies, generally and specifically, each and every averment contained therein.

16 88. Answering paragraph 88, Capital One does not have knowledge or
17 information sufficient to form a belief as to the truth of these allegations and on that
18 basis denies, generally and specifically, each and every averment contained therein.

19 89. Answering paragraph 89, Capital One denies it engaged in any
20 actionable conduct and denies that Plaintiff is entitled to any relief from Capital One.
21 As to the remainder of the paragraph, Capital One does not have knowledge or
22 information sufficient to form a belief as to the truth of these allegations and on that
23 basis denies, generally and specifically, each and every averment contained therein.

24 90. Answering paragraph 90, Capital One denies it engaged in any
25 actionable conduct and denies that Plaintiff is entitled to any relief from Capital One.
26 As to the remainder of the paragraph, Capital One does not have knowledge or
27 information sufficient to form a belief as to the truth of these allegations and on that
28 basis denies, generally and specifically, each and every averment contained therein.

1 91. Answering paragraph 91, Capital One does not have knowledge or
2 information sufficient to form a belief as to the truth of these allegations and on that
3 basis denies, generally and specifically, each and every averment contained therein.

4 92. Answering paragraph 92, Capital One does not have knowledge or
5 information sufficient to form a belief as to the truth of these allegations and on that
6 basis denies, generally and specifically, each and every averment contained therein.

7 93. Answering paragraph 93, Capital One does not have knowledge or
8 information sufficient to form a belief as to the truth of these allegations and on that
9 basis denies, generally and specifically, each and every averment contained therein.

10 **SECOND CAUSE OF ACTION**

11 (Violation of Fair Credit Reporting Act 15 U.S.C. § 1681s-2(b) Against Defendants)

12 **Barclays, Capital One, Citi, U.S. Bank, and American First — Failure to**
13 **Reinvestigate.**

14 94. Answering paragraph 94, Capital One hereby incorporates by reference
15 all of the preceding paragraphs.

16 95. Answering paragraph 95, Capital One contends that it constitutes a
17 statement of law to which no response is required, as the cited authority speaks for
18 itself. To the extent a response is required, Capital One refers Plaintiff to the relevant
19 statutes, denies that it engaged in any actionable conduct and denies that Plaintiff is
20 entitled to any relief from Capital One.

21 96. Answering paragraph 96, Capital One denies that it failed to conduct a
22 reasonable investigation. As to the remainder of the paragraph, Capital One does not
23 have knowledge or information sufficient to form a belief as to the truth of these
24 allegations and on that basis denies, generally and specifically, each and every
25 averment contained therein.

26 97. Answering paragraph 97, Capital One denies that it failed to conduct a
27 reasonable investigation. As to the remainder of the paragraph, Capital One does not
28 have knowledge or information sufficient to form a belief as to the truth of these

1 allegations and on that basis denies, generally and specifically, each and every
2 averment contained therein.

3 98. Answering paragraph 98, Capital One denies that it failed to conduct a
4 reasonable investigation. As to the remainder of the paragraph, Capital One does not
5 have knowledge or information sufficient to form a belief as to the truth of these
6 allegations and on that basis denies, generally and specifically, each and every
7 averment contained therein.

8 99. Answering paragraph 99, Plaintiff sets forth a legal conclusion to which
9 no admission or denial is required.

10 100. Answering paragraph 100, Capital One denies that it failed to understand
11 and/or apply industry standards for credit reporting. As to the remainder of the
12 paragraph, Capital One does not have knowledge or information sufficient to form a
13 belief as to the truth of these allegations and on that basis denies, generally and
14 specifically, each and every averment contained therein.

15 101. Answering paragraph 101, Capital One denies that it failed to conduct a
16 reasonable investigation. As to the remainder of the paragraph, Capital One does not
17 have knowledge or information sufficient to form a belief as to the truth of these
18 allegations and on that basis denies, generally and specifically, each and every
19 averment contained therein.

20 102. Answering paragraph 102, Capital One denies that it failed to conduct a
21 reasonable investigation. As to the remainder of the paragraph, Capital One does not
22 have knowledge or information sufficient to form a belief as to the truth of these
23 allegations and on that basis denies, generally and specifically, each and every
24 averment contained therein.

25 103. Answering paragraph 103, Capital One denies that it failed to conduct a
26 reasonable investigation. As to the remainder of the paragraph, Capital One does not
27 have knowledge or information sufficient to form a belief as to the truth of these
28

1 allegations and on that basis denies, generally and specifically, each and every
2 averment contained therein.

3 104. Answering paragraph 104, Capital One denies that it failed to conduct a
4 reasonable investigation. As to the remainder of the paragraph, Capital One does not
5 have knowledge or information sufficient to form a belief as to the truth of these
6 allegations and on that basis denies, generally and specifically, each and every
7 averment contained therein.

8 105. Answering paragraph 105, Capital One denies that it has developed
9 reckless policies and procedures. As to the remainder of the paragraph, Capital One
10 does not have knowledge or information sufficient to form a belief as to the truth of
11 these allegations and on that basis denies, generally and specifically, each and every
12 averment contained therein.

13 **Experian, Equifax and TransUnion – Failure to Reinvestigate**
14 **Disputed Information**

15 106. Answering paragraph 106, Capital One hereby incorporates by reference
16 all of the preceding paragraphs.

17 107. Answering paragraph 107, Capital One does not have knowledge or
18 information sufficient to form a belief as to the truth of these allegations and on that
19 basis denies, generally and specifically, each and every averment contained therein.

20 108. Answering paragraph 108, Capital One does not have knowledge or
21 information sufficient to form a belief as to the truth of these allegations and on that
22 basis denies, generally and specifically, each and every averment contained therein.

23 109. Answering paragraph 109, Capital One does not have knowledge or
24 information sufficient to form a belief as to the truth of these allegations and on that
25 basis denies, generally and specifically, each and every averment contained therein.

26 110. Answering paragraph 110, Capital One does not have knowledge or
27 information sufficient to form a belief as to the truth of these allegations and on that
28 basis denies, generally and specifically, each and every averment contained therein.

111. Answering paragraph 111, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

112. Answering paragraph 112, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

113. Answering paragraph 113, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

114. Answering paragraph 114, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

115. Answering paragraph 115, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

116. Answering paragraph 116, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

THIRD CAUSE OF ACTION

(Violation of Fair Credit Reporting Act 15 U.S.C. § 1681i(a)(4) Against Defendants)

Experian, Equifax and TransUnion – Failure to Review and Consider All Relevant Information

117. Answering paragraph 117, Capital One hereby incorporates by reference all of the preceding paragraphs.

118. Answering paragraph 118, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

119. Answering paragraph 119, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

120. Answering paragraph 120, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

121. Answering paragraph 121, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

122. Answering paragraph 122, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

FOURTH CAUSE OF ACTION

(Violation of Fair Credit Reporting Act 15 U.S.C. § 1681i(a)(5)(A) Against Defendants Experian, Equifax, TransUnion)

Experian, Equifax and TransUnion – Failure to Delete Disputed and Inaccurate Information

123. Answering paragraph 123, Capital One hereby incorporates by reference all of the preceding paragraphs.

124. Answering paragraph 124, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

125. Answering paragraph 125, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

126. Answering paragraph 126, Capital One does not have knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every averment contained therein.

1 127. Answering paragraph 127, Capital One does not have knowledge or
2 information sufficient to form a belief as to the truth of these allegations and on that
3 basis denies, generally and specifically, each and every averment contained therein.

4 128. Answering paragraph 128, Capital One does not have knowledge or
5 information sufficient to form a belief as to the truth of these allegations and on that
6 basis denies, generally and specifically, each and every averment contained therein.

7 **DEMAND FOR JURY TRIAL**

8 Capital One admits that Plaintiff purports to request a trial by jury; Capital One
9 denies that Plaintiff is entitled to a jury trial against Capital One.

10 **PRAYER FOR RELIEF**

11 With respect to the “Prayer for Relief” section of the FAC, Capital One denies
12 that Plaintiff is entitled to any of the relief that she seeks as against Capital One.

13 **AFFIRMATIVE DEFENSES**

14 NOW WHEREFORE, having answered the FAC and without assuming any
15 burden of proof or burden not required by law, Capital One alleges the following
16 affirmative and other defenses:

17 **FIRST AFFIRMATIVE DEFENSE**

18 1. The Complaint fails to state a claim upon which relief can be granted
19 against Capital One.

20 **SECOND AFFIRMATIVE DEFENSE**

21 2. Plaintiff failed to mitigate her damages, if any.

22 **THIRD AFFIRMATIVE DEFENSE**

23 3. Plaintiff’s damages, if any, were caused by the actions and/or inaction of
24 third parties and/or intervening causes over which Capital One has no control.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 4. Damages or injuries, if any, suffered by Plaintiff are attributable to
27 Plaintiff’s own conduct, deeds, acts, words and omissions, and not to any conduct,
28 deeds, acts, words or omissions of Capital One.

FIFTH AFFIRMATIVE DEFENSE

5. Capital One acted reasonably and in good faith at all material times based on all relevant facts and circumstances known by it at the time it so acted.

SIXTH AFFIRMATIVE DEFENSE

6. Plaintiff is estopped from recovering from Capital One.

SEVENTH AFFIRMATIVE DEFENSE

7. Plaintiff's Complaint seeks punitive damages. Capital One adopts by reference the defenses, criteria, limitations, standards, and constitutional protections mandated or provided by the United States Supreme Court in the following cases: *BMW v. Gore*, 517 U.S. 559 (1996); *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 923 (2001); *State Farm v. Campbell*, 538 U.S. 408 (2003); *Phillip Morris USA v. Williams*, 127 S. Ct. 1057 (2007); *Exxon Shipping Co. v. Baker*, 168 S. Ct. 265 (2008).

EIGHTH AFFIRMATIVE DEFENSE

8. Capital One pleads and asserts all applicable constitutional, statutory, and common law limitations on punitive damages.

NINTH AFFIRMATIVE DEFENSE

9. Capital One is informed and believes, and on that basis alleges that it has complied with all applicable state and federal laws, statutes and regulations and, therefore, cannot be held liable for any alleged damages suffered by Plaintiff.

TENTH AFFIRMATIVE DEFENSE

10. Plaintiff cannot recover from Capital One under the Complaint to the extent that she has not alleged, or cannot maintain, an actual injury-in-fact as this deprives the Court of Article III jurisdiction.

ELEVENTH AFFIRMATIVE DEFENSE

11. To the extent determined to be applicable herein, Capital One has complied with all requirements of the Fair Credit Reporting Act and is, therefore,

1 entitled to each and every defense stated therein and any and all limitations of liability
2 set forth therein or resulting therefrom.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 12. Plaintiff's claim for punitive damages is barred or limited by the
5 provisions of 15 U.S.C. § 1681n.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 13. Any and all harm alleged by Plaintiff can be attributed to several causes,
8 and the damages for the harm, if any, should be apportioned among the various
9 causes, according to the contribution of each cause to the harm sustained.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 14. Any alleged acts or omissions of Capital One that give rise to Plaintiff's
12 causes of action are the result of innocent mistake.

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 15. Any damage or loss incurred Plaintiff as a result of any act or conduct by
15 Capital One would be speculative and thus too uncertain for recovery.

16 **SIXTEENTH AFFIRMATIVE DEFENSE**

17 16. The Complaint, and each claim alleged therein, is barred, in whole or in
18 part, on the grounds that Capital One did not engage in malice as its conduct was not
19 knowing, willful or intentional.

20 **SEVENTEENTH AFFIRMATIVE DEFENSE**

21 17. Plaintiff's claim that Capital One committed willful violations of the Fair
22 Credit Reporting Act is barred by the principles articulated in *Safeco Ins. Co. v. Burr*,
23 127 S. Ct. 2201 (2007).

24 **EIGHTEENTH AFFIRMATIVE DEFENSE**

25 18. Capital One reserves unto itself the right to assert additional defenses and
26 affirmative defenses that it learns of during the course of discovery in this action.

27 **WHEREFORE**, Capital One respectfully requests that the Court:

28 a. Dismiss all of Plaintiff's claims against Capital One with prejudice and on

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- 1 the merits;
- 2 b. Judgment in favor of Capital One;
- 3 c. Award Capital One all costs, disbursements, and reasonable attorney fees
- 4 allowed by law; and
- 5 d. Grant Capital One any such further relief to which it may be entitled.
- 6

7 DATED: November 8, 2024

DOLL AMIR & ELEY LLP

9 By: /s/ Amy I. Borlund

10 AMY I. BORLUND
11 Attorneys for Defendant,
12 CAPITAL ONE, N.A.
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